Decision **DRAFT DECISION OF ALJ PULSIFER (Mailed 12/13/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.	Rulemaking 02-01-011 (Filed January 9, 2002)

OPINION RESOLVING PETITION FOR CLARIFICATION

I. Introduction and Background

This decision resolves the Petition for Clarification of Decision (D.) 03-09-052 filed on May 10, 2005, by the Regents of the University of California on behalf of the University of California, Davis (UC Davis).

In D.03-09-052, issued on September 18, 2003, the Commission addressed issues relating to a "cost responsibility surcharge" (CRS) for customers who met a portion of their requirements through bundled service from Pacific Gas and Electric Company (PG&E) on or after February 1, 2001, and the remainder

through the Western Area Power Administration (WAPA)[1] on a "split wheeling" basis.[2]

The Commission determined in D.03-09-052 that WAPA customers should pay a "fair share" of CRS on departing load as directed by state legislation. In D.03-09-052, the Commission also set forth procedures for resolving the remaining technical questions which are the subject of the UC Davis Petition for Clarification.

D.03-09-052 directed the affected parties to meet and confer to reach agreement on methods for calculating the amount of electricity to be subjected to CRS for WAPA split-wheeling customers, and the manner in which such CRS would be identified, billed, and collected. To the extent that parties could not reach timely agreement, D.03-09-052 provided that parties could file a subsequent motion for clarification.

Affected parties subsequently met to discuss technical implementation issues, but were unable to resolve all issues and did not reach formal agreements. Subsequent to the meet-and-confer sessions, UC Davis requested that PG&E codify in writing its understanding both of issues that had been resolved and those still under discussion, in the form of a draft CRS tariff for WAPA customers. UC Davis claims that PG&E did not develop a set of proposed rules

---

[1] WAPA is a federal power marketing agency within the United States (US) Department of Energy that sells capacity and energy generated by the US Bureau of Reclamation at Central Valley Project (CVP) hydroelectric plants that is surplus to the CVP's own project power consumption.

[2] "Split-wheeling" customers receive both retail electric service from PG&E (on a bundled service basis) and preference power from WAPA (wheeled over PG&E's transmission system). Service is "split" between these two sources of supply.

for application of the CRS in a timely manner for use in continuing the meet-and-confer process.

UC Davis claims that PG&E bypassed proper procedures for resolving the remaining technical issues by filing Advice Letter (AL) 2579-E on November 5, 2004, proposing to implement draft E-SDL tariff. UC Davis protested the E-SDL tariff and requested that it be remanded back to PG&E for completion of the meet-and-confer process. The Commission staff prepared Draft Resolution E-3918 on May 26, 2005, to address the issues presented in PG&E's AL 2579-E.

Pursuant to D.03-09-052, Ordering Paragraph 6, UC Davis filed the instant Petition for Clarification, seeking to have the Commission set aside the Draft Resolution approving PG&E's tariff, and to resolve the disputes relating to the determination of CRS for WAPA Split-Wheeling Customers in this proceeding through a Commission decision. UC Davis is a split-wheeling customer of WAPA.

An Administrative Law Judge (ALJ) ruling issued on June 23, 2005, in response to the UC Davis Petition for Clarification, granted the request of UC Davis to resolve parties' disputes over technical implementation issues through a Commission decision. Accordingly, the ALJ ruling acknowledged that Draft Resolution E-3918 had been withdrawn, provided procedural guidance to the parties, and directed that a Draft Decision would be prepared for the Commission's consideration addressing the substantive disputes set forth in the UC Davis Petition.

Although PG&E had previously served AL 2579-E on parties in this proceeding, protests to AL 2579-E had not been served on parties in this proceeding. Protests were filed by UC Davis on November 24, 2004, by the Power and Water Resources Pooling Authority (PWRPA) on November 26, 2004,

and NASA-Ames Research Center (NASA-Ames) on November 29, 2004. In order to provide a complete record and notice relating to the issues raised in the Petition, protests to AL 2579-E were directed to be filed and served in this proceeding. Because AL 2579-E relates to implementation of the "Regulatory Asset" in the PG&E Bankruptcy proceeding (Investigation (I.) 02-04-026), protests to AL 2579-E were also directed to be served on parties in I.02-04-026. PG&E served a copy of AL 2579-E on parties of record in I.02-04-026. These service and filing requirements were completed by July 1, 2005.

Parties to this proceeding were permitted to file one round of concurrent comments regarding issues raised in the protests and in the UC Davis Petition for Clarification. Concurrent comments were filed on July 15, 2005, by UC Davis and PG&E.

We hereby affirm the procedural approach set forth in the ALJ ruling, and issue this formal decision resolving parties' outstanding disputes. The record for the disposition of these issues was developed by notice and written comments, as outlined above. Although parties were provided the opportunity to request evidentiary hearings by July 15, 2005, no party did so. Accordingly, no evidentiary hearings are required. Based on the record before us, including filed comments on the Petition as well as the protests to PG&E's advice letter, we resolve the disputes regarding technical implementation of CRS provisions to Split-Wheeling Customers in the manner discussed below.

II. Disposition of Technical Issues

A. Cut-Off Date for Assessing CRS

1. Parties' Position

Parties disagree concerning the "Date of Departure" to be applied in determining WAPA customers' obligation to pay CRS. The "Date of Departure"

refers to the date on which a customer reduces or discontinues its bundled electric service from PG&E to take electric service from WAPA or other similarly situated entity. UC Davis claims that parties reached agreement that a Date of Departure of February 1, 2001 would apply as the basis for billing CRS to WAPA customers. PG&E agrees that parties discussed the possibility of using this date, but denies that any final agreement was reached.

In its advice letter, PG&E proposes to use December 31, 2004 as the designated "Date of Departure" for purposes of assessing CRS on WAPA customers because this is the expiration date of Contract 2948A.[3] UC Davis argues, however, that February 1, 2001 should be used as the cut off for calculating WAPA customers' CRS obligations. UC Davis provided an Attachment A to its Petition, showing that the use of a cut-off date of December 31, 2004, as proposed by PG&E, instead of February 1, 2001, nearly doubles UC Davis' annual CRS costs. UC Davis claims that use of PG&E's proposed cut-off date would cause unreasonable and unjust cost shifts from bundled customers to UC Davis.

UC Davis argues that February 1, 2001 date is more appropriate since it reflects the actual date that California Department of Water Resources (DWR) used in determining load requirements for procurement on behalf of customers in PG&E's service territory. UC Davis claims that use of a later date would be arbitrary and contrary to the facts in the record.

[3] Contract 2948A, executed in 1967, governs the interconnection of PG&E's and WAPA's transmission systems, WAPA's use of PG&E's transmission and distribution system, and the integration of WAPA's loads and resources into PG&E's system.

UC Davis claims that the evidence in this proceeding, as discussed in D.03-09-052, calls into question whether DWR ever explicitly calculated ***any*** split wheeling load, including UC Davis' load, when it forecast procurement needs on February 1, 2001. For example, D.03-09-052 at page 19 states:

> "[s]plit wheeling load is a component of retail load, therefore, and not part of wholesale obligations as addressed in the data response. The data response does not indicate any reduction in retail load requirements was made to reflect any "split wheeling" component. Rather, the response affirms that Division 27 of the Water Code authorized DWR to meet retail load. Since the split-wheeling component of the WAPA contract is a retail load component, DWR's procurement to meet retail load logically included split wheeling load." (Emphasis in the original.)

UC Davis thus argues that although the evidence did not affirmatively demonstrate that DWR *excluded* split-wheeling load, neither did the evidence affirmatively demonstrate that DWR *included* split-wheeling load in procuring power. In the absence of affirmative evidence, the Commission relied upon deductive reasoning to conclude that split-wheeling retail load was in fact included in DWR's retail forecast.

UC Davis argues that PG&E's own admissions call into question whether any explicit forecast was made for split-wheeling load for which DWR subsequently procured resources. As stated in D.03-09-052, at page 18, PG&E noted that "[g]iven the very modest amount of bundled service that WAPA split-wheeling customers receive from PG&E, it is likely that DWR was not even aware that "preference power customers" were included within PG&E's bundled load."

UC Davis argues that it is also reasonable to conclude that to the extent DWR looked to any information regarding UC Davis load, DWR would have had to rely on historical data prior to February 1, 2001. UC Davis argues that was the only basis on which it could have forecasted at that time.

UC Davis also argues that there is no basis to conclude that DWR was aware of UC Davis' split-wheeling load and made purchase of electricity based on a quantity that was actually consumed after the purchase was made, that is, actual deliveries from February 1, 2001 to December 31, 2004. Accordingly, UC Davis opposes PG&E's proposal to use December 31, 2004 as the date of departure for UC Davis.

PG&E argues that December 31, 2004 is an appropriate cut off to use as the Date of Departure, reflecting the actual date on which Contract 2948A terminated. PG&E argues that this date is consistent with other departing load tariffs, focusing on the actual point in time that the WAPA customers depart from bundled utility service.

PG&E claims that DWR did not confine power purchase decisions to what customers were using on February 1, 2001, but also considered supplies that would be required in subsequent years. As a result, PG&E claims there is no logical basis to "freeze" split-wheeling requirements at February 1, 2001 usage levels because their usage continued on past that date. DWR thus procured power based on forecasts of demand of continued usage by bundled load past February 1, 2001.

PG&E also argues that UC Davis, in its Petition, is seeking special treatment that would be discriminatory since no other departing load customers would be subject to that requirement.

2. Discussion

We conclude that PG&E is reasonable in utilizing December 31, 2004 as the Date of Departure for purposes of assessing CRS on WAPA customers. PG&E utilized the date that split-wheeling customers, under Contract 2948A, reduced or discontinued electric service from PG&E to take service from WAPA or another similarly situated entity. The use of this date is consistent with other departing load tariffs which are based on the actual date that the customer terminates or reduces bundled utility service.

We are unpersuaded by the arguments of UC Davis that DWR procurement did not contemplate serving any new load added after February 1, 2001. As pointed out by PG&E, DWR procured long-term power requirements to serve load covering time periods subsequent to February 1, 2001. DWR was responsible for procuring power not just for serving load in existence on February 1, 2001, but also for additional bundled load beyond February 1, 2001. DWR entered into a number of long-term contracts for this purpose.

As acknowledged by UC Davis, the Commission relied upon deductive reasoning to conclude that split-wheeling retail load was in fact included in DWR's retail forecast, even though DWR did not explicitly incorporate a separate line item specifically for split-wheeling load. Nothing in the arguments presented by UC Davis indicates that the Commission's reasoning was in error in deducing that split-wheeling load was a component of the overall load forecast.

In comments on the Draft Decision, UC Davis repeats its argument that February 1, 2001 should be used as the "Date of Departure" because that is the actual date that DWR made it procurement decisions. While February 1, 2001 represents the date when DWR assumed responsibility for procuring long-term

contractual obligations on behalf of bundled utility customers, the more relevant criterion for the appropriate "Date of Departure" is whether the forecasts relied upon by DWR incorporated a provision for power supplies to serve. In other words, the relevant time frame is not simply the date on which DWR first assumed responsibility for power purchases, but rather, the time period incorporated into the forecasts relied upon by DWR. In this regard, UC Davis fails to refute the fact that the forecasts upon which DWR relied incorporated a provision for serving split-wheeling load extended beyond February 1, 2001. Contrary to the claim of UC Davis, there is nothing arbitrary or contrary to the facts in utilizing the date of December 31, 2004 as the "Date of Departure." This date is not arbitrary, but is based upon objective evidence that December 31, 2004 was the termination date for Contract 2984 A. As such, the date of December 31, 2004 represents the best available objective indication of the period through which split-wheeling customers were forecast to continue to receive bundled service for a portion of their load. Thus, it is reasonable to conclude that DWR procured power on behalf of such split-wheeling customers that satisfied a portion of their load requirements through bundled service prior to December 31, 2004.

During the time period between February 1, 2001 and December 31, 2004, split-wheeling customers received bundled utility service. Thus, it is reasonable to assess CRS on those WAPA customers to reflect their cost responsibility during this period. Accordingly, we shall approve the Date of Departure proposed by PG&E in its tariff.

B. Application of the 25 Percent Rule in Calculating Departing Load

1. Parties' Positions

The Commission, in D.03-09-052, excluded from "departing load" that load resulting from changes in the contract rate of delivery (CRD) executed in a manner contemplated under the existing contract. To compute the amount in excess of the CRD to be excluded from "departing load," PG&E applied in its draft tariff the lesser of the customer's 12-month or 36-month average historical energy usage for CRS purposes subject to a "25 percent rule." Under this rule, if the 12-month average differs from the 36-month average usage by an amount greater than 25%, the 36-month average usage will be applied as default value. The only exception would be where there is substantial evidence that the more recent usage is the result of a persisting change in the customer's electric usage, and that the 12-month average will be more indicative of the customer's future electric requirements.

UC Davis disagrees with PG&E's approach. UC Davis' Attachment A shows that UC Davis' fluctuations in usage on average over the three years prior to February 1, 2001 were not 25% greater than the one-year average. If the 25 percent rule is applied to a December 31, 2004 cut-off date, however, the result would be to increase UC Davis' CRS by a factor of from 2 to 6.5 times (depending upon whether the X/Y factor or actual demand above CRS is used to determine quantity as discussed further below).

UC Davis argues that such CRS increases would constitute an unjust and unreasonable shift of costs from bundled customers to UC Davis and should be rejected. UC Davis thus asks the Commission to adopt its proposed language on this issue. UC Davis proposes alternative language set forth below if

12-month average and 36-month average fluctuations vary by more than 25%, as follows:

> In the event that the 12-month average usage differs from the 36-month average by an amount greater than 25%, the lower of the two averages will be used if the changes in customer usage patterns causing these differences resulted from a change in the customer's CRD as provided for under contract 2948a.

PG&E opposes the change proposed by UC Davis. PG&E argues that the 25 percent rule, as applied in its E-SDL tariff, is consistent with PG&E's other departing load tariffs and dates back to Preliminary Schedule BB where the Commission first adopted the 25 percent rule. PG&E argues that financial hardship due to the CRS, as claimed by UC Davis, is not a proper basis to grant special exemptions not available to other departing load customers.

2. Discussion

We conclude that UC Davis has not adequately justified its proposed revision regarding application of the 25 percent rule. As proposed by PG&E, the 25 percent rule applied in the E-SDL tariff is consistent with its other departing load tariffs (in effect and proposed). The 25 percent rule is designed to ensure a more accurate estimate of a customer's future usage and mitigate the potential advantage given to a customer in allowing it to unilaterally choose between a 12-month and a 36-month historical usage snapshot.

We previously approved the 25 percent rule in PG&E's Preliminary Statement Part BB which established the specific procedures pertaining to payment of the Competition Transition Charge (CTC) and other nonbypassable charges for departing loads. UC Davis' argument does not persuade us to deviate from this established precedent. UC Davis' argument focuses on the

magnitude of the increase in charges that will result under PG&E's implementation of the 25 percent rule. Yet, as we have previously observed, financial hardship, per se, is not a relevant basis for granting special treatment to one group of departing load customers at the expense of other customers. Rather, each customer must bear its "fair share" of DWR costs in order to avoid cost shifting.

In comments on the Draft Decision, UC Davis repeats its argument that the 25 percent rule, as proposed by PG&E, would be an error of law and inconsistent with D.03-09-052 by disregarding changes in the WAPA CRD as contemplated under the contract. In making this argument, UC Davis cites language from D.03-09-052 indicating that split wheeling customers shall bear no CRS obligation for loads that fall within the CRD as contemplated under Contract 2948 A. Yet, UC Davis fails to articulate why its alternative proposal is superior to that of PG&E in terms of consistency with D.03-09-052. We find no provision of D.03-09-052 that supports calculating the excess over CRD based on the lower of the 12-month versus 36-month average usage as proposed by UC Davis. Under either the PG&E or UC Davis proposal, average usage over some past period is used to measure the amount deemed in excess of the CRD. We have found that PG&E's proposal results in the more reasonable of the two alternative approaches in calculating changes in usage over the CRD. Nothing in UC Davis' comments on the Draft Decision refutes our conclusion that the PG&E proposed method produces the more reasonable way to measure usage in excess of CRD. Accordingly, we decline to modify the 25 percent rule in the manner proposed by UC Davis.

C. Use of the "X/Y" Billing Mechanism Versus Actual Deliveries to Determine Load in Excess of the Contract Rate of Delivery

1. Parties' Positions

In D.03-09-052, the Commission found that WAPA customers must pay CRS on "load in excess of the CRD." UC Davis seeks clarification that "load in excess of CRD" be defined as the actual load in excess of CRD. UC Davis argues that the use of actual load data in excess of CRD is the only appropriate measure consistent with D.03-09-052 because it is the true commodity consumption measure. Moreover, using actual load is easy to administer because the data is routinely gathered and is in the possession of all the relevant parties.

UC Davis opposes PG&E's proposed approach of equating "load in excess of CRD" with retail billing by PG&E to WAPA customers based upon the "X/Y" billing mechanism. UC Davis argues that the quantities reflected in PG&E's retail billings should be equated with actual quantities delivered to UC Davis in excess of CRD.

Under the power accounting provisions in Contract 2948A, Article 14 (c)(2)(i), all split-wheeling customers, except NASA-Ames, purchase WAPA power based on a load factor calculation (i.e., CRD/maximum demand for the month, multiplied by the total energy for the month). This factor determines the amount of WAPA power supplied that customer in a month. PG&E serves the remaining requirements of such customers and bills them under retail tariffs. PG&E refers to this approach as the X/Y method.

Contract 2948A thus provides that WAPA customers' power needs will be met by a combination of WAPA supplied electricity, PG&E firming electricity deliveries up to each customers CRD, and PG&E retail deliveries over

and above each customers' CRD. WAPA power supply sources, including CVP and Washoe generation, external supply contracts, etc., provided for about 40% of its CRD allocations. PG&E firming deliveries accounted for about 60%.

UC Davis characterizes the X/Y billing mechanism as a "financial fiction" included in a negotiated billing rate from Contract 2948A that can greatly overstate the actual amount of power delivered over and above the CRD.

To illustrate its argument of the billing effects of using the "X/Y" methodology, UC Davis provided a hypothetical example. If a WAPA customer's CRD was 25 MW, and power deliveries were metered once per hour, and the measured electrical demand in all 730 hours of a month was no higher than 25 MW, then WAPA would supply 10 MW (7,300 MWh) and PG&E firming power would supply 15 MW (10,950 MWh). No PG&E retail supply would be provided since the CRD would not be exceeded.

If, in the next month, the WAPA customer's maximum demand was 25 MW for all hours except one, when it spiked to 30 MW, then WAPA supplied 10 MW (7,300 MWh), PG&E firming power supplied 15 MW (10,950 MWh), and an additional 5 MWh of supply over and above it's firming power contract obligations had to be provided by PG&E. Under Contract 2948A, however, despite PG&E only supplying 5 MWh beyond its normal firming obligations, the "X/Y" provision provides that 5/30 of the <u>total</u> consumption of 18,250 MWh, (or 3,650 MWh) may be billed by PG&E at retail rates (instead of just the 5 MWh supplied over and above its normal firming obligations). The amount of power billed at regular WAPA rates is reduced by a corresponding amount from 18,250 MWh to 15,213 MWh. UC Davis argues that the price difference between WAPA standard rates and PG&E retail rates for the firming power is substantial.

UC Davis claims that use of the X/Y billing factor, together with a February 1, 2001 date, would increase annual CRS payments by about six times above CRS payments based on actual demand above CRD. When the X/Y billing factor is used together with a December 31, 2004 date, the resulting increase is a factor of nearly eight times. The X/Y billing factor increase affect is compounded further when applied together with a December 31, 2004 date and the PG&E proposed 25 percent rule, increasing UC Davis annual costs by 15.5 times. UC Davis calculates that the impact of PG&E's proposed methodology is to increase its CRS obligation by nearly $2 million per year, or approximately $19 million over a 10-year period.

UC Davis provided the cost impact calculations of PG&E's methodology compared to the results using its own proposed calculation methods in Attachment A of its comments. These calculations were based, in part, on: (1) billing data for UC Davis from January 1998 through August 2003; and (2) 12-month and 36-month snapshots for UC Davis' account for February 1, 2001. UC Davis claims that the resulting increases would constitute an unjust and unreasonable transfer of cost responsibility from bundled retail customers to UC Davis.

UC Davis argues that such increases would represent an unjust and unreasonable shift of costs from bundled customers to UC Davis. UC Davis thus seeks clarification that split wheeling departing load is to be measured by the actual deliveries above the CRD, rather than PG&E's proposed use of the X/Y billing factor.

PG&E disagrees with UC Davis' proposal to use actual deliveries to calculate the amount in excess of the CRD. PG&E defends its methodology utilizing the X/Y billing factor on the basis that it is consistent with how it has

billed UC Davis and other split-wheeling customers for retail usage throughout the course of Contract 2948A.

2. Discussion

We are persuaded that UC Davis' requested clarification should be granted affirming that the calculation of load subject to the CRS should be based on the actual amount of power supplied in excess of the CRD, and should *not* be based on the X/Y billing factor, as proposed by PG&E. Our stated intent in D.03-09-052 is that the CRS be based on actual quantities of power used above the CRD. As noted by UC Davis, however, the X/Y pricing provision in Contract 2948A is a *compound charge* consisting not only of the cost for the actual power usage supplied by PG&E above the CRD, but also includes recovery of the costs of ancillary services. The X/Y billing factor incorporates the actual quantity of power consumed merely as one component of a larger calculation. UC Davis hypothetical example described above illustrates that the X/Y billing factor results in additional cost recovery beyond merely commodity costs to include ancillary services, as well. Through use of this X/Y billing factor, the calculated level of usage for retail billing purposes is greater than the actual level of usage in excess of the CRD. Accordingly, we find UC Davis' argument persuasive that the X/Y billing factor is not appropriate for calculating usage in excess of CRD for purposes of billing CRS. Use of the X/Y factor will result in an overstatement of the usage level in excess of the CRD, and consequently, an overstatement in the applicable level of CRS. The CRS obligation is only properly applied to actual usage above the CRD.

PG&E's principal argument in favor of using the X/Y billing factor for calculating the CRS obligation is that the X/Y billing factor is already being used to calculate bundled retail billings under Contract 2948A.[4] Thus, PG&E argues that use of the X/Y billing factor for CRS purposes achieves consistency. Yet, this argument is unpersuasive because it fails to account for the differences in the nature and purposes of CRS billings versus bundled retail service billings as negotiated under Contract 2948A. In the case of CRS, the cost responsibility "indifference" calculation is only intended to apply to actual usage in excess of the CRD. In this manner, the CRS properly reflects the intended cost responsibility associated only with the actual volumes of usage in excess of CRD. By contrast, the X/Y billing factor produces a usage figure *in excess of* actual amounts so as to recover revenues associated not only with actual power delivered, but also with other costs and services over and above the actual power component of bundled retail service. The use of the X/Y billing is acceptable for the limited purpose of recovering bundled retail service-related costs under Contract 2948 A because it reflects parties' mutually negotiated agreement as to how the costs of ancillary services are to be recovered. PG&E has not shown, however, that the same X/Y billing factor is suitable in the separate context of calculating CRS obligations where only actual power usage is the proper measure. Thus, PG&E's argument based on the principle of consistency is not a

[4] In its reply comments, PG&E objects to the introduction of extra-record material by UC Davis in its opening comments on the Draft Decision in the form of three attachments (labeled "exhibits") intended to illustrate the effects of the PG&E's proposed methodology. We do not rely on such extra-record material as a basis for this decision, but still find that UC Davis' position is correct with respect to the X/Y billing factor based on the merits of its underlying Petition.

valid basis in this instance for applying the X/Y billing factor for CRS purposes where the underlying billing mechanisms, themselves, address different sorts of cost functions. Accordingly, we grant the requested modification of UC Davis on this issue.

D. Disposition of Other Issues Addressed in Previously Filed Protests

In addition to the disputes specifically identified in the UC Davis' Petition for Clarification, other issues were raised by parties in their previously filed protests to PG&E's Advice Letter. We dispose of those outstanding issues as discussed below.

1. Clarification of "Monthly Average Billing" Method

NASA-Ames argues that, because of its highly uneven usage pattern, its departing load charges should be calculated "based on the average monthly usage for the 12 or 36 months prior to January 1, 2005" instead of using a "different usage for each month of the year" based on the historical averages for those particular months. Although NASA-Ames prefers the one method, it requests that PG&E be required to explicitly state that either method could be used.

PG&E objects to NASA-Ames' request. PG&E's method is consistent with its approach for all other departing load customers under Preliminary Statement Part BB and its other (either approved or pending) departing load tariffs. This approach also allows for more accurate billing due to the possibility of seasonal pricing differences.

Draft Resolution E-3918 rejected NASA-Ames' request but directed PG&E to describe more clearly its "monthly average billing" method in Schedule E-SDL to eliminate confusion over how energy usage will be calculated.

PG&E is amenable to making this change in a supplemental advice letter. We accordingly direct PG&E to do so.

2. NASA-Ames' Claim of "Factual Error"

NASA-Ames claims that Schedule E-SDL contains a "factual error" and requests PG&E to correct the error by stating that "under Contract 2948A, WAPA supplies the first 80 MW of load consumed by NASA-Ames in any half hour and PG&E supplies loads in excess of 80 MW." In response, PG&E admitted that the X/Y method is not accurate for NASA-Ames but disagreed that there was any factual error. For NASA-Ames only, PG&E agrees it uses a different method for calculating usage attributable to PG&E.

Draft Resolution E-3918 stated in this regard:

> [P]roposed Schedule E-SDL does not contain any erroneous language. In fact, the pertinent language in that tariff states that the split wheeling customer's energy usage "shall be the PG&E retail usage computed and billed by PG&E under Contract 2948A." This language enables PG&E to utilize the appropriate accounting power provisions applicable to each individual split-wheeling customer. Because Schedule E-SDL properly accounts for this situation, NASA-Ames' protest on this issue is moot.

We agree with the result of Draft Resolution E-3918, and there is no factual error in PG&E's Draft Tariff Schedule E-SDL.

3. UC Davis' Arguments Concerning Alleged Favoritism in the Service Agreement

UC Davis argues that Appendix D of the Service Agreement[5] inappropriately grants preferential treatment to certain WAPA split-wheeling customers, and that the amount of PG&E's retail service provided to WAPA customers is too trivial to be subjected to departing load charges.

PG&E argued in its responses to UC Davis' protest that such concerns with respect to "preferential treatment" should have been taken up at FERC. We agree with PG&E. Moreover, UC Davis' arguments about the "trivial" nature of CRS recovery should have been raised in the proceeding leading up to D.03-09-052. This is not the appropriate time or forum to raise these issues.

4. UC Davis' Concerns Regarding "Inconsistency" With PG&E's Service Agreement

UC Davis argues that Appendix D of PG&E's WDT Service Agreement provides that CRS will not apply to certain WAPA split-wheeling customers whose CRD changed effective October 1, 2004. It alleges this provision is significantly inconsistent with PG&E's proposed Schedule E-SDL because the tariff would apply to all WAPA split-wheeling customers.

---

[5] On October 22, 2004, PG&E and WAPA filed an Offer of Settlement at FERC which articulated and finalized the terms of their common understanding in a document entitled "Non-Applicability of Departing Load Charges to Western-PG&E Split Wheeling Customers." This document was included as Appendix D to the PG&E Wholesale Distribution Tariff (WDT) Service Agreement for Wholesale Distribution Service to WAPA (Service Agreement).

PG&E concurs with UC Davis that improvements could be made to clarify its Schedule E-SDL and ensure that there is no conflict. PG&E has since submitted some definitional modifications along the lines suggested by PWRPA, which should address the concerns raised by UC Davis.

5. Removal of the Term "Partially Departing Split-Wheeling Customers" and Related References

UC Davis argues that the provisions for CRS applicability for "partially departing split-wheeling customers" with respect to load growth are inconsistent with the provisions in the tariff applicable to fully departing split-wheeling customers.

PG&E has admitted that, upon further reflection, it believes the concept of "partially departing split-wheeling customer" can be deleted from its proposed tariff, based on the terms of the Settlement Agreement. Accordingly, PG&E submitted revised tariff sheets to reflect this change. PG&E's revisions to its tariff render moot UC Davis' protest regarding CRS applicability for partially departing split-wheeling customers.

6. PWRPA's Concerns Regarding Categorical Exemptions

PWRPA raises concerns about the categorical exemption accorded split-wheeling customers through the reallocation process. PWRPA asserts that AL 2579-E and proposed Schedule E-SDL are unduly vague and confusing with the categorical exemption accorded split-wheeling customers through the reallocation process.

In its response to protests, PG&E stated that it is amenable to addressing PWRPA's concerns by making definitional changes and submitted substitute sheets to AL 2579-E accordingly. The Energy Division reviewed these

substitute sheets and stated in Draft Resolution E-3918 that the substitute sheets address PWRPA's concerns. Therefore, we conclude that PWRPA's concerns on this issue appear to have been resolved.

7. PWRPA's Requested Modification Regarding the Settlement Agreement

In comments on the draft resolution, PWRPA requested certain word changes to the draft resolution. PG&E indicated that it would not object to the suggested changes as long as the additional phrase from PWRPA was included: "*See* Section 2.2 of the Settlement Agreement."

PG&E did take exception, however, to PWRPA's discussion of the role of metering. The role of metering was not an issue in the settlement negotiations, so it is not accurate to say that the parties agreed not to meter or to meter. PG&E, therefore, asks the Commission to reject any more of PWRPA's position than an explicit inclusion of the reference to Section 2.2 of the Settlement Agreement.

We agree with PG&E, and shall only approve the mutually agreed-upon changes.

8. Including Applicable Provisions From Preliminary Statement Part BB as Part of Schedule E-SDL

PG&E did not include dispute resolution provisions in its proposed Schedule E-SDL but contemplated submitting similar provisions in a future filing. PG&E therefore proposed that all aspects of the dispute resolution provisions found in Preliminary Statement Part BB would apply until such future filing was made.

In its protest, NASA-Ames did not object to PG&E's proposal but asked for clarification that only the dispute resolution provisions of Preliminary

Statement Part BB will apply to split-wheeling departing load customers. NASA-Amex argued that, absent such clarification, split-wheeling customers would be required to refer to multiple tariffs to determine their departing load obligations, thus defeating the goal of tariff simplification sought by Schedule E-SDL.

Draft Resolution E-3918 directed that, to the extent provisions from Preliminary Statement Part BB will apply to split-wheeling customers, they should be explicitly stated in Schedule E-SDL to avoid causing customer confusion and/or the need to refer to multiple rate schedules. PG&E is amenable to modifying its proposed tariff to comply with this directive. We shall accordingly so direct to PG&E to modify its proposed tariffs.

E. Conclusion

Accordingly, with the resolution of disputed issues as set forth above, a proper foundation has now been established for proceeding with tariff implementation of the WAPA CRS requirements in accordance with D.03-09-052, as further clarified by the instant order. Accordingly, we direct PG&E to file revised tariffs in accordance with the directives in the instant order within 14 days of today's date.

III. Comments on the Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with § 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on January 17, 2006 and reply comments were filed on January 23, 2006.

We have taken parties' comments on the Draft Decision into account, as appropriate, in finalizing this decision. Upon review of the comments, we have amended the initial Draft Decision with respect to the disposition of the X/Y

billing factor. Although the Draft Decision adopted PG&E's position with respect to the X/Y billing factor, we are now persuaded upon review of comments on the Draft Decision that UC Davis' position is the correct one for reasons discussed above. Therefore, we have amended the Draft Decision on this issue to adopt the UC Davis' position. With respect to the other issues in the Petition, we affirm the holdings originally made in the Draft Decision.

IV. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. In D.03-09-052, the Commission ordered PG&E, the CVP Group, and UC/CSU to meet and confer to seek agreement concerning the manner in which relevant preference power volumes in excess of the CRD under Contract 2948A would be identified for purposes of billing CRS.

2. To the extent that parties could not reach timely agreement, D.03-09-052 provided that parties could file a motion for clarification.

3. Representatives from PG&E, the CVP Group, and UC/CSU met in October 2003 to discuss technical implementation issues pursuant to D.03-09-052 directives, but were unable to resolve all issues and did not reach any formal agreements.

4. PG&E discontinued further efforts to reach resolution of the remaining technical issues through the meet-and-confer process, and instead, filed Advice Letter (AL) 2579-E to implement tariffs on November 5, 2004.

5. UC Davis filed its Motion for Clarification based on the claim that PG&E bypassed proper procedures for resolution of the remaining technical issues by filing AL 2579-E. UC Davis sought to have disputed issues relating to PG&E's

proposed tariff addressed in this docket rather than through the Commission Resolution process.

6. A subsequent ALJ ruling acknowledged the withdrawal of the pending Commission Resolution, and provided a process for the issues raised by UC Davis to be resolved within this docket through a Commission decision.

7. PG&E utilized December 31, 2004 as a cut-off date for CRS, since this was the date that split-wheeling customers, under Contract 2948-A, reduced or discontinued electric service from PG&E to take service from WAPA or another similarly situated entity.

8. Even if DWR did not explicitly identify split wheeling load as a separate line item in its forecast, a logical inference can be made that that split-wheeling customers' load was incorporated in DWR electricity procurement.

9. DWR was responsible for procuring power not just for serving load in existence on February 1, 2001, but also for additional bundled load beyond February 1, 2001, and entered into long-term contracts for this purpose.

10. To compute the amount in excess of the CRD to be excluded from "departing load," PG&E proposed in its draft tariff that the lesser of the customer's 12-month or 36-month average historical energy usage be applied for CRS purposes subject to a "25 percent rule."

11. Under the "25% percent rule," if the 12-month average versus the 36-month average usage differs by an amount greater than 25%, the 36-month average usage will be applied as default value. The only exception would be where there is substantial evidence that the more recent usage is the result of a persisting change in the customer's usage, and that the 12-month average will be more indicative of the customer's future requirements.

12. UC Davis has not provided a compelling reason to change the 25 percent rule to allow for the lower of the two averages to be used if the changes in customer usage patterns causing these differences resulted from a change in the customer's CRD as provided for under Contract 2948A.

13. The fact that UC Davis may pay a lower CRS under its proposed change in the 25 percent rule does not, of itself, warrant adopting the change.

14. The 25 percent rule is designed to ensure a more accurate estimate of a customer's future usage and mitigate the potential advantage given to a customer in allowing it to unilaterally choose between a 12-month and a 36-month historical usage snapshot.

15. The 25 percent rule, as applied in its E-SDL tariff, is consistent with PG&E's other departing load tariffs in effect and proposed.

16. Under the "X/Y billing" provisions in Contract 2948A, WAPA power is calculated on a load factor calculation as the CRD/maximum demand for the month, multiplied by the total energy for the month. The resulting factor determines the amount of WAPA power supplied that customer in a month, with the customer's remaining requirements served under PG&E bundled retail tariffs.

17. PG&E's proposed E-SDL tariff equates "load in excess of CRD" with retail billings to WAPA customers based upon the X/Y billing mechanism.

18. PG&E has used the X/Y method to calculate UC Davis' usage attributable to PG&E retail service and has billed UC Davis for that amount of usage over the life of Contract 2948A.

19. Even though the X/Y billing factor is used to compute retail billings for bundled service under Contract 2948A, the X/Y billing factor does not produce accurate billing amounts for purposes of the CRS obligation.

20. The X/Y billing factor produces a usage figure *in excess of* actual amounts so as to recover revenues associated not only with actual power delivered, but also with other costs and services over and above the actual power component of bundled retail service.

21. Other miscellaneous tariff revisions to Schedule E-SDL that PG&E has agreed to, in its comments filed on July 15, 2005, are reasonable, as summarized in the conclusions of law, below.

Conclusions of Law

1. The Petition for Clarification should be granted in order that the disputed issues raised by parties relating to technical implementation of PG&E's tariff may be addressed through a Commission decision.

2. The date of December 31, 2004 should be used as a cut-off date, rather than February 1, 2001, in order to be consistent with other departing load tariffs, and to recognize that DWR procured power based on forecasts continued usage by bundled load past February 1, 2001.

3. UC Davis has not justified its request to amend the "25 percent rule" applicable to calculations of its CRS under Tariff Schedule E-SDL. Although CRS requirements may be higher under PG&E's application of the 25 percent rule, or UC Davis may experience economic hardship in paying CRS, those factors are not relevant criteria to justify waivers, exemptions, or other special treatment in the assessment of CRS requirements.

4. UC Davis has justified its request to require PG&E to amend its tariff with respect to the use of the X/Y billing factor. The tariff should be amended to equate "load in excess of CRD" with the actual quantities of usage by the customer in excess of CRD, rather than by applying the X/Y billing factor.

5. NASA/Ames has not justified its request for calculating its usage based upon average monthly usage for the 12- or 36-months prior to January 1, 2005, instead of using a different usage for each month. PG&E should amend its advice letter to describe more clearly its "monthly average billing" method in Schedule E-SDL to eliminate confusion over how energy usage will be calculated.

6. Modifications to PG&E's proposed tariff should be made to explicitly state the provisions of Preliminary Statement Part BB that will apply to split-wheeling customers.

7. PG&E's proposed tariff provisions for Schedule E-SDL are reasonable, and PG&E should file a supplement within 14 days consistent with the directives in this order.

O R D E R

IT IS ORDERED that:

1. The Petition for Clarification of the Regents of the University of California on behalf of University of California (UC Davis) is hereby granted to the extent that it seeks resolution through a Commission Decision of certain technical disputes relating to Departing Load Charges for Western Area Power Administration Split-Wheeling Customers.

2. The resolution of technical disputes as identified in the UC Davis' Petition is hereby decided as set forth in the ordering paragraphs below.

3. The requested modifications in Pacific Gas and Electric Company's (PG&E) E-SDL tariff sought by UC Davis relating to the Date of Departure, and the 25 percent rule, and the X/Y billing method have not been justified and are hereby denied.

4. The requested modification in PG&E's E-SDL tariff sought by UC Davis relating to the X/Y billing factor has been shown to have merit and is adopted. PG&E shall amend its E-SDL tariff with respect to its use of the X/Y billing mechanism to derive "load in excess of the CRD." Instead, the tariff shall define "load in excess of the CRD" as being based on the actual quantities of power delivered to the customer in excess of the CRD.

5. PG&E shall be required to provide clarifying language in its filed E-SDL tariff, describing more clearly its "monthly average billing method" to eliminate confusion over how energy usage is calculated, and to explicitly state the extent to which provisions from Preliminary Statement Part BB will apply to split-wheeling customers.

6. Within 14 days of today's date, PG&E shall file a supplement to Advice Letter 2579-E with revised tariffs that comply with the provisions of this decision. PG&E shall serve the supplement on all parties that protested AL 2579-E, all parties served with AL 2579-E, and all parties in Rulemaking 02-01-011. AL 2579-E as supplemented to comply with this decision shall be effective on the date the supplement is filed, subject to verification of compliance by the Energy Division. In accordance with the Commission's Practice and Procedure Rules 4.1 and 4.5 appended to Decision 05-01-032, any new protests shall be filed within 20 days of the date the supplement is filed and shall be limited to the substance of the supplement.

This order is effective today.

Dated _____, at San Francisco, California.